IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

RP.No. 229 of 2007()

AGAINST THE ORDER IN AR.53/2006 Dated 13/12/2006
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REVIEW PETITIONERS/OPPOSITE PARTIES
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1. KERALA WATER AUTHORITY, JALA BHAVAN, TRIVANDRUM, REPRESENTED BY ITS MANAGING DIRECTOR.

2. THE SUPERINTENDING ENGINEER, PUBLIC HEALTH CIRCLE, KERALA WATER AUTHORITY, TRIVANDRUM-695 055.

BY ADV. SMT.AMBIKA DEVI, SC, KWA

RESPONDENT: APPLICANT

HYDRO-TECH, ENGINEERS & CONTRACTORS, PTC TOWER, S.S.COIL ROAD, THAMPANOOR, TRIVANDRUM-695 001.

BY ADV. SRI.RAJIV ABRAHAM GEORGE
SRI.EAPEN ABRAHAM GEORGE

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007 ALONG WITH R.P.NOS.230 & 231 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

` K.S.RADHAKRISHNAN, Ag.C.J.

R.P.Nos.229, 230 & 231 of 2007

Dated, this the 14th day of March, 2007

ORDER

These review petitions have been preferred by the Kerala Water Authority along with its Superintending Engineer so as to review the order passed by this Court in A.R.No.53 of 2006 and connected matters. Respondent herein was the applicant before this Court for appointment of an arbitrator to settle the dispute between the parties. This Court disposed of the matters by order dated 13th December, 2006 appointing Justice B.M.Thulasidas (Retd.) as the Arbitrator and the Arbitrator has already entered on reference.

2. These review petitions have been preferred by the Kerala Water Authority stating that even though they received notice from the Court, they could not contest the matter. Learned counsel appearing for the Water Authority submitted that there is no arbitrable dispute and there is no arbitration clause in the agreement so as to refer the matter to the Arbitrator. Counsel for the review petitioners also brought to my knowledge

a Government order, G.O.MS.45/85/PW dated 16.5.1985, stating that the Government had decided that the existing system of providing for reference of Public Works contracts, the value of which is Rupees two lakhs and below, for arbitration will be dispensed with and that the Chief Engineer (General) will issue necessary directions to all officers of the Public Works Department to implement this order by deleting the arbitration clause from all tender forms and agreements. Placing reliance on the said Government order the Kerala Water Authority passed Resolution No.275 dated 26.6.1985 resolving to follow the Government order and to delete the arbitration clause contained in the Madras Detailed Standard Specification with regard to the contract agreement executed with the Kerala Water Authority. Counsel further states that in view of the aforesaid resolution taken by the Kerala Water Authority this Court was not justified in appointing the Arbitrator.

3. Counsel appearing for the respondent-applicant submitted that unless and until the Government order as well as the resolution passed by the Kerala Water Authority are

implemented by deleting the arbitration clause from the agreement, the Water Authority is bound by the arbitration clause. Counsel referred to clause 73 of the Preliminary Specifications to the Madras Detailed Standard Specification. Reference was further made to Annexure-5, wherein it was specifically stated that the Arbitrator for fulfilling the duties set forth in the arbitration clause of the Standard Preliminary Specification shall be Superintending Engineer of P.H.Circle, Thiruvananthapuram. In view of the specific stipulation in Annexure-5 as well as the inclusion of clause 73, counsel submitted that the applicant was justified in seeking a direction from this Court for appointment of an Arbitrator.

4. Heard counsel on either side. Parties are bound by the arbitration clause in the agreement. There is nothing to show that the Government order and the resolution passed by the Kerala Water Authority have been implemented by the Kerala Water Authority. On the other hand, the arbitration clause was retained in the agreement.

In such circumstances I find no error committed by this

Court in appointing an Arbitrator to resolve the dispute between the parties. The review petitions lack merit and they are accordingly dismissed.

K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

vns